RIGHTS STUFF

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Supreme Court To Review Texting Case

The Ontario, Delaware Police Department, like most employers, had a formal policy reserving the right to monitor its employees' "network activity including e-mail and internet use." The policy permitted "light personal communications" by employees but told them that they "should have no expectation of privacy."

The OPD gave its SWAT team pagers and told them that they were responsible for charges in excess of 25,000 characters a month. Under their informal policy, the officers who paid for the excess charges did not have their messages inspected. If they argued that all of their text messages were work-related, the OPD at least in theory would have reviewed their messages to verify that. If the messages were all work-related, the officer would not have to pay for the excess charges. Given how the policy was implemented, members of the SWAT team presumed they had some expectation of privacy with these messages.

One officer, Sgt. Jeff Quon, had excess charges several times. His supervisor had grown tired of being a bookkeeper and talked to his supervisor about the ongoing problem. His supervisor told him to review the messages. The intent of this review was disputed - it might have been to see whether they needed to increase their plan to allow for more characters, or it might have been to see if city employees were using their pagers to take care of personal business while on the city clock. The review found that in one month, Sgt. Quon sent more than 450 text messages via his pager, but only 57 of them were work-related. Many of the personal messages were sexually explicit in nature.

Sgt. Quon and some of his text message recipients sued, saying their Fourth Amendment right to privacy had been violated. The Ninth District Court of Appeals found that the department's formal policy that the employees should have no expectation of privacy had been overridden by its informal policy that it wouldn't review messages if the office paid for the excess charges.

The City of Ontario appealed to the U.S. Supreme Court, arguing that "a lower-level supervisor's informal arrangement" should not be allowed to trump "the employer's explicit no-privacy policy." In its brief, the City said, "it is not objectively reasonable to expect privacy in a message sent to someone else's workplace pager, let alone to a police officer's department-issued pager."

In December, 2009, the U.S. Supreme Court agreed to hear the case. Technically, the ruling will apply only to government employees because the right to privacy found in the Constitution does not apply to private employers. But the ruling may give clues on the Supreme Court's attitude towards privacy in general, especially in this age of e-mails, text messages and other digital communications.

The Court of Appeals decisions are Quon v. Arch Wireless Operating Company, Inc. and City of Ontario 529 F.3d. 892 (9th Cir. 2008) and Quon v. Arch Wireless, 554 F3d 769 (9th Cir. 2009). ♦

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City Recognizes Local Women For Community Service

Mayor Mark Kruzan has announced that three local women have been selected by the Women's History Month Committee to be honored during March for their outstanding service to our community.

Kerry Thomson has been named Bloomington's Woman of the Year, former Mayor Tomilea Allison has been named the recipient of the Lifetime Contribution Award and Maggie Sullivan has been chosen to receive the Emerging Leader Award.

The Women's History Month Lunch Committee is organized by the City of Bloomington Commission on the Status of Women. The Emerging Leader Award will be presented at a women's leadership workshop on March 22 at City Hall, 401 N. Morton Street. The Woman of the Year and Lifetime Contribution Award recipients will be honored at the group's annual luncheon, held on March 10, at 12:15 p.m. at the Convention Center of Bloomington-Monroe County, 302 S. College Avenue. Organizations for women and women-owned businesses will have exhibits at the luncheon.

The program for the luncheon, entitled *Writing Women Back into History,* will feature a dramatic presentation entitled "On Their Shoulders We Stand: a Salute to Women Who Paved the Way," written by Gladys DeVane.

The cost is $20 per person, and seats must be purchased in advance. Checks payable to "City of Bloomington - Women's History Month Lunch" along with the name(s) to appear on the guest list may be sent to Women's History Month Lunch, Commission on the Status of Women, PO Box 100, Bloomington, IN 47402. Seats also can be purchased at the Community & Family Resources Department, Suite 260 at City Hall, 401 N. Morton Street. The deadline for purchasing a seat is Friday, March 5. Scholarships are available for individuals who need assistance purchasing a seat to attend the lunch.

For more information about the lunch or workshop, contact Sue Owens at 349-3468 or owenss@bloomington.in.gov. ♦

Male Victims Of Sexual Harassment

When people think of sexual harassment cases, they tend to think of male supervisors harassing female subordinates. But two complaints recently settled by the U.S. Equal Employment Opportunity Commission show that this is not always the case.

The first case involved Cheesecake Factory, Inc., a national restaurant chain that advertises itself as a place to create "lasting memories with family and friends." According to the lawsuit, Cheesecake management knew about and tolerated repeated sexual assaults against six male employees by a group of male kitchen staffers. The EEOC said the evidence showed that the kitchen staffers touched the victims' genitals, made sexually charged remarks, ground their genitals against them and forced them into repeated episodes of simulated rape. Managers allegedly witnessed the employees dragging their victims, kicking and screaming, into the refrigerator. The EEOC said that someone complained to almost every manager at the restaurant, but nothing was done. The victims felt helpless; one finally called the police. Under the settlement, Cheesecake will pay $345,000 to the victims, will train its employees about sexual harassment and will provide an ombudsman to address sexual harassment complaints.

The second case involved Regal Entertainment Group, a national movie theater chain. According to the complaint, a female employee repeatedly grabbed a male coworker's crotch. When the victim and his direct supervisor complained to the theater's manager, she did not take adequate steps to stop the harassment. Instead, according to the EEOC, the manager retaliated against the victim and two supervisors with unwarranted discipline, unfairly low performance evaluations and stricter scrutiny of their performance. The theater will pay $175,000, provide annual anti-discrimination training, track future complaints and provide annual reports to the EEOC.

The EEOC says that in the past decade, the percentage of sexual harassment cases filed by men has increased from 12 to 16 percent. ♦

Extremes In Political Correctness

We can all cite examples of when political correctness is taken too far. My favorite is from Washington D.C., when a city employee was nearly fired because he said that they were going to have to be "niggardly" with city funds. The person who heard this comment, an African American woman, took offense and complained. But of course the word "niggardly" is a perfectly, non-offensive word meaning "stingy" or "miserly."

Sometimes though, failing to be politically correct can endanger lives. On July 28, 2009, the Indianapolis Star reported that a Chinese refugee, Yu Dongyue, went missing in Indianapolis on July 16. Mr. Dongyue was granted political asylum in the U.S. after the Chinese government imprisoned and tortured him for 17 years. His offense: throwing paint on a portrait of the Communist leader Mao Zedong during the Tianamen Square protests in 1989.

When his family realized he was missing, they called friends who in turn called the Indianapolis police. Exodus Refugee Immigration, Inc. put up posters about the missing man around town. People who knew Mr. Kongyue were concerned about him, because he doesn't speak English and because his years of being tortured had caused him mental problems.

On July 1, a stranger found Mr. Dengyue lying on the grass near an intersection and called the police. The responding officer said Mr. Dongyue was "alert and conscious, however, he would not look at me or speak to me." He was arrested for public intoxication and taken to jail. Because he wouldn't, or couldn't, speak to the officers, and because he had no id on him, the processing officer gave him the name "Jackie Chan." If the officer had followed procedures and processed him as "John Doe," the police might have quickly realized this man was a missing person. Mr. Dongyue spent seven hours in jail before he was released. Eleven hours after he was released, someone saw him on the street and recognized his face from the missing poster fliers. Police then helped him get home.

The police department is now reminding its officers to identify any unknown person as "John Doe" or "Jane Doe" and to not use any terms on police reports that might be considered offensive. The second part of the reminder was added because the arresting officer used the term "Oriental" to identify the arrestee's race. Some people find that term offensive, preferring the word "Asian." As the executive director of the Asian American Alliance, Inc., Jessie Lee Mills, said, "Oriental usually refers to a rug, not a set of people." ♦

New Ads Use Humor To Encourage Hiring People With Disabilities

Typically, ads that seek to encourage businesses to hire people with disabilities are earnest, pro bono public service announcements. But 30 agencies that provide employment services have combined their resources to run paid ads that rely on humor to make their points.

The ads challenge conventional wisdom about employees with disabilities by offering humorous examples of people with differences who are already employed. In one ad, an employee in a wheelchair points out her colleagues who could be labeled as "different." One of the co-workers is a woman wearing clothes that clash terribly; she is called "fashion-deficient." A klutzy man at the copier is "copy incapable." A shouting man has "volume control syndrome." The woman in the wheelchair has a difference, too: she is terrible at making coffee, and is thus "coffee-making impaired."

Text ads have similar examples. A man who can't dance well is "rhythm impaired." A man who is hard to understand is "jargon prone." The man who can't dance well says, "Just because someone moves a little differently doesn't mean they can't help move your business forward. The same goes for people with disabilities."

Barbara Otto, executive director of Health and Disability Advocates in Chicago, said that the point of the ads is "to get that employment decision-maker thinking that everyone in the workplace is different." They are trying to avoid the typical "pity-party" approach.

For more information about the campaign, go to thinkbeyondthelabel.com. ♦

(Article based on "Using Humor in a Campaign Supporting Disabled People," by Stuart Elliot, New York Times, January 28, 2010.)

Extra Breaks To Express Milk Not Required By Law

Josephine Puente worked for the Department of Homeland Security as a border agent. In January, 2000, she gave birth to a daughter and decided to breast-feed her. She returned to full-time work three months after her daughter was born.

While at work, she had to take breaks to express breast milk. This required her to leave her regular post, travel to the El Paso Port of Entry Station where she could express her breast milk privately, clean and store her pump in a secure location and return to her post. Under DHS policy, she was entitled to three paid breaks a day, two twenty-minute breaks and one thirty-minute lunch break.

She formally asked for two thirty-minute breaks a day to express her milk, on top of the seventy minutes of breaks every border agent received each day. Her supervisor approved her request, but said she would have to either take leave or extend her shift to account for the extra break time she was requesting. She sued, alleging that this was pregnancy discrimination.

Nine years later, no doubt long after her daughter had given up nursing, Ms. Puente lost her lawsuit. The Court said, "At bottom, Puente asked for a benefit different from that which every other [border patrol agent] received. While she was allegedly denied that benefit, she never alleges that she received less than the status quo as a result of her request." The Court said that the Pregnancy Discrimination Act does not require employers to give pregnant women or new mothers preferential treatment. Giving Ms. Puente an additional hour of paid breaks would have been giving her preferential treatment.

The case is Puente v. Ridge, 2009 WL 1311504 (5th Cir. 2009). ♦

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